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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,598	10/16/2003	Martti Johannes Sannikka	SAN0003U	5149

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EXAMINER

VALENTI, ANDREA M

ART UNIT PAPER NUMBER

3643

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/685,598

Applicant(s)

SANNIKKA, MARTTI JOHANNES

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,359,960 to Yananton in view of U.S. Patent No. 5,788,064 to Sacherer.

Regarding Claim 1, Yananton teaches a container for urine collection with a disposable plastic body (Yananton #50 and Col. 10 line 59), the body having a rim with a sealing lip and having affixed to an exterior surface, containing a test strip (Yananton Col. 4 line 54 and Col. 5 line 59-66).

Yananton does not explicitly teach the test strips are in a sealed envelope attached to the exterior surface. However, Sacherer teaches storing test strips in an envelope since urine test strips should not be exposed to moisture or contaminants before use. It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention to prevent moisture exposure to the test strips prior to use to ensure reliability of the analytical determination as taught by Sacherer (Sacherer Col. 2 line 8-10 and line 15-17).

It would have been obvious to one of ordinary skill in the art at the time of the invention to affix the test strips (i.e. test strips in an envelope as taught by Sacherer) to

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the exterior surface of the urine container body since this modification is merely making two known elements integral for the advantage of having the test strips readily available when needed and to prevent the test strips for getting lost. Making a known element integral with another known element does not provide a patentably distinct limitation.

Regarding Claim 2, Yananton as modified teaches the body has a raised portions (Yananton #52) formed on the bottom of the container, the raised portions **adapted to** mate with the cooperating features formed on the bottom of the cat liter box.

Regarding Claim 3, Yananton as modified teaches a lid which seals the container (Yananton Col. 11 line 50-55).

Regarding Claim 4, Yananton as modified teaches pre-packaged charge of cat litter in the container (Yananton Col. 11 line 3 and Col. 5 line 25-26).

Regarding Claim 6, Yananton as modified teaches the body has sides, which taper for nesting (Yananton Fig. 2).

Regarding Claim 7, Yananton as modified teaches the envelope is non-transparent (Sacherer Fig. 1 #2).

Regarding Claim 8, Yananton as modified teaches the test strip is a urine test strip (Yananton abstract line 2 and Sacherer Col. 2 line 9).

Regarding Claim 9, Yananton as modified teaches the raised portions are two in number (Yananton Fig. 5 #52).

Regarding Claim 10, Yananton as modified teaches the raised portions are parallel mounds with tapered sides (Yananton Fig. 5 #52).

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Regarding Claim 11, Yananton as modified teaches the raised portions have flat tops (Yananton Fig. 5 #52).

Regarding Claims 5 and 12, Yananton as modified teaches that the cat owner can perform the testing at home on a routine basis, but does not explicitly teach a label affixed to an exterior surface, the lid having printed on it information pertaining to the interpretation of the test strip. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since it is old and notoriously well-known in the art of packaging to provide instructional information on the packaging for the consumers use, e.g. on food boxes instructions are provided for preparing and cooking the food, instructions are provided for assembling packaged devices, home pregnancy tests are provided with result interpretation on the packaging of the test kit.

Regarding Claim 13, Yananton as modified teaches the pre-packaged charge of cat litter in the container (Yananton Col. 11 line 3 and Col. 5 line 25-26).

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,359,960 to Yananton in view of U.S. Patent No. 5,788,064 to Sacherer as applied to claim 2 above, and further in view of U.S. Patent No. 5,887,546 to Gruel

Regarding Claim 14, Yananton as modified is silent on the cat litter box is partitioned cat litter box. However, Gruel teaches a partitioned cat litter box (Gruel Fig. 2 and 3 #12a, 12b, and 14). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Yananton with the teachings of Gruel at the time of

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the invention for ease of lifting, transport, and cleaning as taught by Gruel (Gruel Col. 1 line 45-46).

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,359,960 to Yananton in view of U.S. Patent No. 5,788,064 to Sacherer as applied to claim 1 above, and further in view of U.S. Patent No. 5,590,623 to Toole et al.

Regarding Claim 15, Yananton as modified is silent on the body is transparent or translucent. However, Toole et al teaches a cat litter body constructed of translucent plastic (Toole Col. 3 line 31). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Yananton with the teachings of Toole at the time of the invention since the modification is merely an aesthetic design choice involving the selection of a known material for a certain desired aesthetic affect to blend with the surrounding environment or a translucent material whereby a cat can observe the interior of the box in advance of entry (Toole Col. 5 line 35-37).

Response to Arguments

Applicant's arguments filed 17 November 2004 have been fully considered but they are not persuasive.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does

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not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Examiner maintains that a clear determination was made of the prior art based on knowledge of one of ordinary skill in the art. Yananton teaches that it is old and notoriously well-known in animal husbandry to provide the **combination** of an animal urine container and a medical diagnostic system for testing the urine utilizing test strips (Yananton Col. 5 line 65-66 "supplied with the instant invention in combination with the appropriate dipsticks"). Yananton is silent on how the dipsticks are packaged.

However, Sacherer teaches that it is old and notoriously well-known to provide medical diagnostic systems with test strips in a sealed envelope (the envelope is Sacherer #2) and that the purpose of placing test strips in an envelope is to prevent the test strips from becoming damaged or soiled or to protect against moisture (Sacherer Col.1 line 23). Therefore, it is clearly within the bounds of one of ordinary skill in the art at the time of the invention to modify the teachings of Yananton with the teachings of Sacherer by the motivation of protecting the test strips from soiling or damage. Examiner would like to make references to cited prior art U.S. Patent No. 2,904,474 to Forg. This was not used as part of the rejection; however, the examiner would like to point out how the teachings of Forg further illustrate that it is notoriously well-known in the diagnostic field to provide test strips in sealed envelopes (Forg Fig. 1 and Col. 2 line 25-27) to keep the test strips sterile prior to usage. Forg further supports the teachings of Sacherer that it is accepted wisdom in the field to provide test strips in sealed envelopes and that one of ordinary skill in the art would look to the teachings of Sacherer when providing the test

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strips of Yananton for the known advantage of providing sterile and mechanically protected test strips.

As discussed in the preceding paragraph, Yananton teaches the combination of urine collection body and test strips, but does not provide the teaching of how the test strips are packaged. It would have been obvious to one of ordinary skill in the art at the time of the invention to affix the test strips (i.e. test strips in an envelope as taught by Sacherer) to the exterior surface of the urine container body since this modification is merely making two known elements integral for the advantage of having the test strips readily available when needed and to prevent the test strips from getting lost. Making a known element integral with another known element does not provide a patentably distinct limitation. [*In re Larson*, 340 F.2d 965, 967, 144 USPQ 347, 349 (CCPA 1965)].

Examiner maintains that Yananton as modified by Sacherer teaches each and every limitation. Examiner maintains that Yananton although not illustrated teaches a sealing lip (Yananton Col. 11 line 50-55). Examiner maintains that Yananton teaches raised portions (Yananton Col. 11 line 39-40). The depressions in the floor inherently create raised portions. Yananton teaches the same structural raised features as claimed by applicant. Examiner maintains that Yananton teaches pre-packaged cat litter as claimed by applicant. Applicant merely claims "a pre-packaged charge of cat litter in the container." Yananton teaches that a pre-packaged charge of cat litter in a container too (Yananton Col. 11 line 3-11).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Andrea M. Valenti
Patent Examiner
Art Unit 3643

24 January 2005



Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600

1/25/05